

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Peter Cole Goodwin *et al.*  
Serial No.: 10/070,218  
Filing Date: July 19, 2002  
Group Art Unit: 1755  
Confirmation No.: 9610  
Examiner: Marcantoni, Paul D.  
For: **EXTRUDABLE CEMENTITIOUS MATERIAL**

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 C.F.R. 1.181(a) TO WITHDRAW  
THE HOLDING OF ABANDONMENT**

Dear Sir or Madam:

Applicants' attorneys respectfully petition the Director of Patents and Trademarks to withdraw the above-identified application under the provisions of 37 C.F.R. § 1.181(a) on the ground that the abandonment of the above-identified application was incorrectly entered.

The undersigned received a Notice of Abandonment dated May 16, 2008, stating that the above-captioned patent application was abandoned for failing to timely reply to the Office Action mailed October 12, 2007, which was originally due on or before Saturday, April 12, 2008, (but in fact extended to Monday, April 13, 2008, pursuant to 35 U.S.C. § 21 and M.P.E.P. § 710.05). However, an Amendment and Response to the Office Action was timely filed on April 11, 2008, in advance of the original deadline as evidenced by the attached copy of the Electronic Acknowledgement Receipt (EAR) issued by the United States Patent and Trademark

Application Ser. No. 10/070,218  
Customer No. 60148  
Attorney Docket No.: 131279.1016

Office on April 11, 2008. A copy is also available on PAIR. Copies of the papers, as filed, are also attached.

While the filing is accurately represented in Image File Wrapper (IFW), it is not identified in the Transaction History. It is believed that Examiner Marcantoni was not made aware that the Amendment and Response had been timely filed which led to the improper issuance of the Notice of Abandonment.

In further support of this Petition, Applicant also provides a Statement under 37 C.F.R. § 1.8(b)(3) by the undersigned attesting to the fact that the papers referenced above were timely filed via EFS-WEB on April 11, 2008, in advance of the statutory deadline of Saturday, April 12, 2008.

As this Petition does not result from any error on the part of the undersigned, it is respectfully submitted that no Petition fee is due. However, in the alternative, and if required to reinstate this application, please consider this a Petition to Revive under 37 C.F.R. § 137(b) as unintentionally abandoned due to a good faith attempt to respond to the Office Action dated October 12, 2007, as attested to by the enclosed documents previously referenced and please debit any required fees for this Petition, or any other fees due, to Deposit Account No. 07-0153 and reference Attorney Docket No. 131279.1016.

Reinstatement of this application and action on the filed documents are respectfully requested.

Date: May 28, 2008

Respectfully submitted,

GARDERE WYNNE SEWELL LLP



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Scott C. Sample, Ph.D.  
Reg. No. 52,189  
214.999.4712

Attachments:

- Electronic Acknowledgement Receipt issued by the United States Patent and Trademark Office on April 11, 2008
- Amendment and Response filed April 11, 2008
- Statement under 37 C.F.R. 1.8(b)(3)

Application Ser. No. 10/070,218  
Customer No. 60148  
Attorney Docket No.: 131279.1016

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**STATEMENT UNDER 37 C.F.R. § 1.8(b)(3)**

Dear Sir or Madam:

With regard to the above-identified patent application, I have personal knowledge and hereby attest that I filed the Amendment and Response to the Office Action mailed October 12, 2007, via EFS-WEB on April 11, 2008, in advance of the statutory deadline of Saturday, April 12, 2008.

In view of having received an Electronic Acknowledgement Receipt (EAR) on April 11, 2008, I had reasonable basis to expect that the Amendment and Response was timely filed in advance of the statutory deadline. A copy of the EAR is attached and is also identified on Image File Wrapper as having been sent on April 11, 2008.

Application Ser. No. 10/070,218  
Customer No. 60148  
Attorney Docket No.: 131279.1016

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: May 28, 2008

Respectfully submitted,



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Scott C. Sample, Ph.D.  
Reg. No. 52, 189  
214.999.4712

Attachment: Electronic Acknowledgement Receipt (EAR) having a "Receipt Date" of April 11, 2008

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	3139025
<b>Application Number:</b>	10070218
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	9610
<b>Title of Invention:</b>	Extrudable cementitious material
<b>First Named Inventor/Applicant Name:</b>	Peter Cole Goodwin
<b>Customer Number:</b>	60148
<b>Filer:</b>	Scott C. Sample
<b>Filer Authorized By:</b>	
<b>Attorney Docket Number:</b>	131279-1016
<b>Receipt Date:</b>	11-APR-2008
<b>Filing Date:</b>	19-JUL-2002
<b>Time Stamp:</b>	12:10:13
<b>Application Type:</b>	U.S. National Stage under 35 USC 371

### Payment information:

Submitted with Payment	yes
Payment Type	Credit Card
Payment was successfully received in RAM	\$ 1050
RAM confirmation Number	6617
Deposit Account	070153
Authorized User	SAMPLE,SCOTT C

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. 1.492 (National application filing, search, and examination fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)  
 Charge any Additional Fees required under 37 C.F.R. Section 1.20 (Post Issuance fees)  
 Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

### File Listing:

Document Number	Document Description	File Name	File Size(Bytes) /Message Digest	Multi Part /.zip	Pages (if appl.)
1		Response_to_OA_mailed_Oct_12_2007.pdf	1267695 4926ea514d931b6e4920d1f8e31f530fe d3e0091	yes	13
<b>Multipart Description/PDF files in .zip description</b>					
<b>Document Description</b>		<b>Start</b>		<b>End</b>	
Amendment - After Non-Final Rejection		1		1	
Claims		2		6	
Applicant Arguments/Remarks Made in an Amendment		7		13	

### Warnings:

### Information:

2	Fee Worksheet (PTO-06)	fee-info.pdf	8142 20ea2acd184b7a7462def3a719272a1f 038fbdc3	no	2
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### Warnings:

### Information:

Total Files Size (in bytes): 1275837

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

### New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

### National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

### New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Group Art Unit: 1755  
Confirmation No.: 9610  
Examiner: Marcantoni, Paul D.  
For: *Extrudable Cementitious Material*

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Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**AMENDMENT AND RESPONSE TO NON-FINAL OFFICE ACTION**  
**MAILED OCTOBER 12, 2007**

Dear Sir:

Applicant submits this amendment and respectfully requests entry of the amendment set forth herein, consideration of the remarks provided with this paper, and allowance of the claims currently pending. The Office Action mailed October 12, 2007, established a three-month shortened statutory period to respond, or on or before January 12, 2008. As this response is being filed on or before April 12, 2008, a three-month extension of time is respectfully requested. Please amend the above-identified application as follows:

**Amendments to the Claims** begins on page 2 of this paper.

**Remarks** begin on page 7 of this paper.

### Amendments to the Claims

This listing of claims will replace all prior versions and listings of claims in this application.

#### Listing of Claims:

- 1-11. (Canceled)
12. (Currently amended) An extrudable fibre-reinforced cementitious formulation comprising:
  - a cementitious material;
  - reinforcing fibres;
  - water;

at least one ingredient selected from the group consisting of lime, silica, density modifiers, and mixtures thereof, and

0.3-5% by weight of dry solids of cementitious material of a cellulose ether and 0.05 to less than 0.2% by weight of dry solid of cementitious material of a sulphonated dispersion agent, wherein the quantity of dispersion agent is sufficient to increase the efficacy of the viscosity enhancing agent cellulose ether during extrusion of said extrudable cementitious formulation.
13. (Canceled)
14. (Original) A cementitious formulation as claimed in claim 12 wherein dispersion agent is added in a quantity sufficient to maintain extrudability with a reduced dosage of viscosity enhancing agent as compared to a conventional dosage.
15. (Original) A cementitious formulation as claimed in claim 12 wherein dispersion agent is added in a quantity sufficient to maintain extrudability with a lower grade or lower molecular weight viscosity enhancing agent as compared to a conventional dosage.
16. (Currently amended) A cementitious formulation as claimed in claim 12 wherein dispersion agent is added in a quantity sufficient to improve extrudability for a quantity of viscosity enhancing agent cellulose ether substantially equivalent to a conventional dosage.
17. (Canceled)
18. (Previously presented) A cementitious formulation as claimed in claim 12 wherein said cellulose ether is hydroxyl alkyl cellulose, hydroxyl alkyl alkyl cellulose, carboxy alkyl cellulose or alkyl cellulose, or mixtures thereof.

19. (Currently amended) A cementitious formulation as claimed in claim 12 wherein the viscosity enhancing agent cellulose ether is selected from the group consisting of hydroxyl propyl methyl cellulose, hydroxyl ethyl methyl cellulose, methyl cellulose, hydroxyl ethyl cellulose, carboxy methyl cellulose, ethyl cellulose and hydroxyl butyl methyl cellulose, or mixtures thereof.

20. (Withdrawn) A cementitious formulation as claimed in claim 12 wherein the viscosity enhancing agent is selecting from the group consisting of polyvinyl alcohols, gums include Welan gum, locust bean gum guar gum, sodium alginate, swellable alkali emulsions of acrylic co-polymers, clays or modified clays, polyethylene glycol and acrylic based polymers or mixtures thereof.

21. (Canceled)

22. (Previously Presented) A cementitious formulation as claimed in claim 12 wherein the dispersion agent is sulphonated melamine formaldehyde.

23-51. (Canceled)

52. (Withdrawn) In a method for extruding a cementitious material, the improvement comprising adding a quantity of dispersion agent sufficient to increase the efficacy of a viscosity enhancing agent contained in said cementitious material.

53. (Withdrawn) A method as claimed in claim 52 wherein the viscosity enhancing agent is provided as 0.3-5% by weight of dry solids of the cementitious material and the dispersion agent is provided as 0.05-.05% by weight of dry solids of cementitious material.

54. (Withdrawn) A method as claimed in claim 52 wherein the dispersion agent is added in a quantity sufficient to maintain extrudability of the cementitious material with a reduced dosage of viscosity enhancing agent as compared to a conventional dosage.

55. (Withdrawn) A method as claimed in claim 52, wherein the dispersion agent is added in a quantity sufficient to maintain extrudability of the cementitious material with a lower grade or lower molecular weight viscosity enhancing agent as compared to a conventional dosage.

56. (Withdrawn) A method as claimed in claim 52, wherein the dispersion agent is added in a quantity sufficient to improve extrudability for a quantity of viscosity enhancing agent substantially equivalent to a conventional dosage.

57. (Withdrawn) A method as claimed in claim 52 wherein the viscosity enhancing agent is a cellulose ether.

58. (Withdrawn) A method as claimed in claim 52 wherein the viscosity agent is hydroxy alkyl cellulose, hydroxy alkyl alkyl cellulose, carboxy alkyl cellulose or alkyl cellulose, or mixtures thereof.

59. (Withdrawn) A method as claimed in claim 52 wherein the viscosity enhancing agent is selected from the group consisting of hydroxy propyl methyl cellulose, hydroxy ethyl methyl cellulose, methyl cellulose, hydroxy ethyl cellulose, carboxy methyl cellulose, ethyl cellulose and hydroxy butyl methyl cellulose, or mixtures thereof.

60. (Withdrawn) A method as claimed in claim 52 wherein the viscosity enhancing agent is selecting from the group consisting of polyvinyl alcohols, gums include Welan gum, locust bean gum guar gum, sodium alginate, swellable alkali emulsions of acrylic co-polymers, clays or modified clays, polyethylene glycol and acrylic based polymers or mixtures thereof.

61. (Withdrawn) A method as claimed in claim 52 wherein the dispersion agent is a suiphonated type dispersion agent.

62. (Withdrawn) A method as claimed in claim 52 wherein the dispersion agent is suiphonated melamine formaldehyde or suiphonated naphthalene formaldehyde.

63. (Withdrawn) A method as claimed in claim 52 wherein the viscosity enhancing agent and dispersion agent are combined prior to treating the cementitious material.

64. (Withdrawn) A method as claimed in claim 52 wherein the viscosity enhancing agent and dispersion agent are combined insitu with the cementitious material.

65. (Withdrawn) A method of treating a cementitious material for extrusion, said method comprising adding to the cementitious material a viscosity enhancing agent, and a dispersion agent in a quantity sufficient to increase the efficacy of the viscosity enhancing agent during said extrusion.

66. (Withdrawn) A method as claimed in claim 65 comprising 0.3-5% by weight of dry solids of viscosity enhancing agent and 0.05-0.5% by weight of dry solids of dispersion agent.

67. (Withdrawn) A method as claimed in claim 65 wherein dispersion agent is added in a quantity sufficient to maintain extrudability with a reduced dosage of viscosity enhancing agent as compared to a conventional dosage.

68. (Withdrawn) A method as claimed in claim 65 wherein dispersion agent is added in a quantity sufficient to maintain extrudability with a lower grade or lower molecular weight viscosity enhancing agent as compared to a conventional dosage.

69. (Withdrawn) A method as claimed in claim 65 wherein dispersion agent is added in a quantity sufficient to improve extrudability for the given quantity of viscosity enhancing agent substantially equivalent to a conventional dosage.

70. (Withdrawn) A method as claimed in claim 65 wherein the viscosity enhancing agent is a cellulose ether.

71. (Withdrawn) A method as claimed in claim 65 wherein the viscosity agent is hydroxy alkyl cellulose, hydroxy alkyl alcyal cellulose, carboxy alkyl cellulose or alcyal cellulose, or mixtures thereof.

72. (Withdrawn) A method as claimed in claim 65 wherein the viscosity enhancing agent is selected from the group consisting of hydroxy propyl methyl cellulose, hydroxy ethyl methyl cellulose, methyl cellulose, hydroxy ethyl cellulose, carboxy methyl cellulose, ethyl cellulose and hydroxy butyl methyl cellulose, or mixtures thereof.

73. (Withdrawn) A method as claimed in claim 65 wherein the viscosity enhancing agent is selecting from the group consisting of polyvinyl alcohols, gums include Welan gum, locust bean gum guar gum, sodium alginate, swellable alkali emulsions of acrylic co-polymers, clays or modified clays, polyethylene glycol and acrylic based polymers or mixtures thereof.

74. (Withdrawn) A method as claimed in claim 65 wherein the dispersion agent is a sulphonated type dispersion agent.

75. (Withdrawn) A method as claimed in claim 65 wherein the dispersion agent is sulphonated melamine formaldehyde or suiphonated naphthalene formaldehyde.

76. (Withdrawn) A method of forming a low density cementitious article comprising adding a cementitious material, density modifying additive, viscosity enhancing agent and dispersion agent to water, extruding the resultant paste and curing the extruded article wherein the dispersion agent is added in a quantity sufficient to increase the efficacy of the viscosity enhancing agent.

77. (Withdrawn) A method as claimed in claim 76 wherein prior to extrusion, lime, silica and/or fibre reinforcement may be added to the cementitious material.

78. (Withdrawn) A method as claimed in claim 76 wherein the density of the cured article is not greater than 1.2 grams per cm<sup>3</sup>.

79. (New) An extrudable fibre-reinforced cementitious formulation comprising:  
a cementitious material;  
reinforcing fibres;  
water;  
at least one ingredient selected from the group consisting of lime, silica, density modifiers, and mixtures thereof, and

0.3-5% by weight of dry solids of cementitious material of a cellulose ether selected from the group consisting of hydroxyl propyl methyl cellulose, hydroxyl ethyl methyl cellulose, hydroxyl ethyl cellulose, carboxy methyl cellulose, ethyl cellulose and hydroxyl butyl methyl cellulose, or mixtures thereof, and

0.05 to less than 0.2% by weight of dry solid of cementitious material of a sulphonated dispersion agent, wherein the quantity of dispersion agent is sufficient to increase the efficacy of the cellulose ether during extrusion of said extrudable cementitious formulation.

80. (New) An extrudable fibre-reinforced cementitious formulation comprising:  
a cementitious material;  
reinforcing fibres;  
water;  
at least one ingredient selected from the group consisting of lime, silica, density modifiers, and mixtures thereof, and

3-5% by weight of dry solids of cementitious material of a cellulose ether selected from the group consisting of hydroxyl propyl methyl cellulose, hydroxyl ethyl methyl cellulose, hydroxyl ethyl cellulose, carboxy methyl cellulose, ethyl cellulose and hydroxyl butyl methyl cellulose, or mixtures thereof, and

0.05 to less than 0.2% by weight of dry solid of cementitious material of a sulphonated dispersion agent, wherein the quantity of dispersion agent is sufficient to increase the efficacy of the cellulose ether during extrusion of said extrudable cementitious formulation.

## **REMARKS**

Claims 12, 14-16, 18-20, 22, and 52-78 were pending in this application. Claims 20 and 52-78 are withdrawn. In this response, Claims 12, 16 and 19 are amended. Claims 79 and 80 have been added. Thus, Claims 12, 14-16, 18, 19, 22, 79 and 80 are now pending and believed to be allowable in light of the amendments and remarks presented below.

The following observations were made by the Examiner in the pending Office Action are reproduced in part below for ease of reference:

- Non- Elected Claim
- Non-Elected by Original Presentation
- New Matter
- 35 U.S.C. 102
- 35 U.S.C. 103

### Non-Elected Claim

Applicant notes that the Examiner has not rejoined Claim 20. The Examiner's basis for not rejoining the claim is unstated. It is understood that the Examiner will postpone further discussion of withdrawn dependent Claim 20 until Claim 12 is found allowable.

### New Matter

The Examiner rejects Claim 12 "under the first paragraph of 35 USC 112 and 35 USC 132 as the specification as originally filed does not provide support for the invention as is now claimed. The terms 'to less than 0.2%' by weight of (dry solid...) of sulphonated dispersion agent is new matter. There is no literal support for "to less than 0.2% from the original disclosure." The Examiner does not state which requirement of 112, 1<sup>st</sup> paragraph is asserted in

support of the rejection, but the reference to 35 USC 132 suggests that it is based on a lack of written description.

The recited range is “0.05 to less than 0.2% by weight of dry solid of cementitious material of a sulphonated dispersion agent”, which finds support in the specification at page 5, line 25 and canceled original Claim 13 which recited “the dispersion agent is provided as 0.05-5% by weight of dry solids of cementitious material.” Thus, the currently recited range “0.05 to less than 0.2%” is within the range of “0.05-5%” identified in the specification and originally-filed claims. The recitation of “to less than 0.2%” is therefore fully within the range provided in the specification and therefore satisfies the description requirement. See M.P.E.P. § 2163.05(III) (discussing *In re Wertheim*, 191 USPQ 90 (CCPA 1976) (range of “25-60%” recited in the specification satisfies the description requirement for a narrower claimed limitation of “between 35% and 60%”).

The Examiner states that “applicants provide no examples for 0.2% or even less than this amount over a range of data points to support this newly added limitation. The applicants only have the teaching of the broad range and the endpoints.” (page 4). However, a “description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption.” M.P.E.P. § 2163.04 (citing *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971)). “The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.” Id. (citing *In re Wertheim*, 541 F.2d, 257, 263, 191 USPQ 90, 97). It is respectfully submitted that the Examiner has not met his burden since no “sufficient evidence or reasoning”

has been provided as to why a person skilled in the art would *not* recognize in Applicant's disclosure a description of the claimed range defined by the claims. Applicant respectfully submits that the discussion of the specification and original claims above weighs strongly against the possibility that the burden could be established.

Additionally, the Examiner's states that "[t]here is no literal support for 'to less than 0.2% from the original disclosure.'" The Examiner appears to imply that there is a requirement that a claimed feature must have "literal support" in the specification. However, "the invention claimed does not have to be described in *ipsis verbis* in order to satisfy the description requirement of § 112." In re Lukach, 169 USPQ 795 (CCPA 1971). It appears that the M.P.E.P. does not require that a claim have "literal" support aside from negative limitations, (see M.P.E.P. § 2173.05(i)), which is inapplicable here.

It is respectfully submitted that this rejection was made in error, and Applicant respectfully requests that it be withdrawn.

35 U.S.C. § 102

The Examiner rejects Claims 12, 14-16, 18-19, and 22 are being anticipated under 35 U.S.C. 102(b) over Valore '231 ("Valore"), or Sobolev *et al.* '289 ("Sobolev"). The Applicant acknowledges with appreciation the withdraw of Rirsch and it is believed that the Examiner meant "cellulose ether" and not "cellulose" per se in describing the lack of disclosure in that reference. If this incorrect, the Examiner is respectfully requested to clarify the record.

Regarding Sobolev and Valore, the rejection of Claims 12, 14-16, 18-19 and 22 in view of these references were maintained on the basis of the new matter rejection (pages 3-4) that has

been addressed separately above. In view of the foregoing discussion, it is respectfully requested that the rejections of the claims in view of *Sobolev*, and *Valore*, be withdrawn.

For the sake of completeness, however, applicant incorporates its discussion of these references made in prior responses. As a courtesy, the discussion is substantially readdressed below. *Sobolev* provides “complex admixture” formulations in Tables 1 to 5. Table 3 describes an admixture having both a sulphonated DA and a cellulose ether VEA, and this admixture is used in cementitious formulations 3.1.1, 3.1.2, 3.2.1 and 3.2.2. The sulphonated DA in the formulation is the total of “hyperplasticizer” and “modified lignosulfate” that for each formulation is 1.14% (Formulation Nos. 3.1.1 and 3.1.2) or 2.54% (Formulation Nos. 3.2.1 and 3.2.2) and hence greater than the DA range recited in original and amended Claim 12 of “0.05-0.5” and “0.05 to less than 0.2”, respectively. As *Sobolev* does not teach a specific embodiment within Applicant’s claimed range in view of the foregoing, Applicant respectfully submits that *Sobolev* does not anticipate Claim 12. *Atofina v. Great Lakes Chemical Corp.*, 78 U.S.P.Q.2d 1417, 1423-24 (Fed. Cir. 2006) (holding that a genus cannot anticipate a species claim, including overlapping ranges between the claim at issue and the prior art, if the prior art does not disclose a specific embodiment within the claimed range). Further, *Sobolev* does not suggest or teach the claimed invention, specifically that the “dispersion agent is sufficient to increase the efficacy of the viscosity enhancing agent” and thus does not require that the DA increase the efficacy of the VEA during extrusion, as claimed. For the reasons mentioned above, it is believed also that for at least the reasons stated above Claim 12 is patentably distinguishable over *Sobolev* alone, or in combination with *Hayakawa* or *Downing*. As Claims 14-16, 18, 19, and 22 depend from Claim 12, it is believed that these claims are also patentably distinguishable.

35 U.S.C. § 103

The Examiner has rejected Claims 12, 14-19, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Hayakawa *et al.* '086 ("Hayakawa"), Valore, or Sobolev alone, or each in view of Downing *et al.* '199 ("Downing").

Hayakawa is asserted to teach all the limitations of Claim 12, except that it "does not teach the addition of a dispersant or dispersing agent such as sulfonated dispersant." (page 3 of the office action). It is asserted that "the addition of a dispersant to cement composition is a conventional additive to cement and its addition would have been an obvious design choice for one of ordinary skill in the art." (page 3). Regarding Hayakawa alone, while the Examiner may be correct (note: may) that one of ordinary skill would know to add dispersants to a cellulose fiber cement composition, it is an overextension to say that there is a suggestion to modify Hayakawa to provide a specified range, namely, "0.05 to less than 0.2% by weight of dry solid of cementitious material of a sulphonated dispersion agent", and it respectfully submitted that not all the limitations of Claim 12 are taught. (cf. M.P.E.P. § 2142). The Examiner asserts that it would have been an obvious design choice, but has not explained why a narrow concentration, viz, "0.05 to less than 0.2% by weight of dry solid of cementitious material of a sulphonated dispersion agent", would have been an obvious design choice. Regarding the combination of Hayakawa and Downing, it similarly does not establish a *prima facie* case since neither reference teaches or suggests the addition of "0.05 to less than 0.2% by weight of dry solid of cementitious material of a sulphonated dispersion agent", (and the combination also fails to teach that the agent in the claimed range would increase the efficacy of the cellulose ether), and it is

respectfully submitted that the combination of Hayakawa and Downing does not establish a prima facie case.

For the reasons addressed above, Valore and Sobolev alone fail to teach, disclose or otherwise suggest all the limitations of Claim 12.

With respect to the combination of Valore with Downing, the Examiner in general refers Applicant to the final office action that was mailed June 19, 2007, for detailed analysis for matters other than the combination of Hayakawa and Downing. In that office action, the analysis included Valore alone, but does not appear to address its combination with Downing, and it is respectfully submitted that a prima facie case of obviousness accordingly has not been established.

With respect to the combination of Sobolev with Downing, it does not appear that the Examiner addressed the combination in the Office Action of June 19, 2007, accordingly, it is respectfully submitted that a prima facie case of obviousness has not been established.

#### Claim Amendments

Claims 12, 16 and 19 have been amended to replace “viscosity enhancing agent” with “cellulose ether”. New Claim 79 is presented to limit the group of cellulose ethers to avoid the prior art of record that does not disclose these compounds in the ranges recited by Claim 12. New Claim 80 is similar to Claim 79 but recites a narrower range by reciting 3% as the lower end of the range of cellulose ether which is greater than apparently disclosed in the art of record. It is submitted that new Claims 79 and 80 are believed to be patentably distinguishable over the art of record.

Applicant has made a diligent effort to advance the prosecution of this application by amending the claims, describing herein how the claims distinguish over the prior art, and providing new claims that distinguish over the art. In light of the amendments and remarks presented above, Applicant submits that Claims 12, 14-16, 18, 19, 22, 79, and 80 are in condition for allowance, and requests favorable consideration and allowance of these claims.

Fees for a three-month extension of time is believed to be due and will be paid at the time this Amendment is filed. However, Applicant hereby authorizes the Commissioner to charge any additional fees or refunds that may be required by this paper to Deposit Account 07-0153.

Respectfully submitted,  
GARDERE WYNNE SEWELL LLP

  
\_\_\_\_\_  
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ATTORNEY FOR APPLICANT

[April 12, 2008]